BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2018] NZEnvC 214

IN THE MATTER	of the Heritage New Zealand Pouhere Tāonga Act 2014
AND	of an appeal pursuant to s 58 of the Act
BETWEEN	BETTY KING, PANIA NEWTON, NGĀ KAITIAKI O IHUMĀTAO CHARITABLE TRUST and SOUL IHUMĀTAO
	(ENV-2017-AKL-000160)
	Appellants
AND	HERITAGE NEW ZEALAND POUHERE TĀONGA
	Respondent
AND	FLETCHER RESIDENTIAL LIMITED
	Applicant
AND	TE KAWERAU IWI TRIBAL AUTHORITY INCORPORATED and MAKAURAU MARAE MĀORI TRUST
	s 274 parties

Court:	Environment Judge D A Kirkpatrick Environment Commissioner S K Prime Deputy Environment Commissioner G Paine
Hearing:	at Auckland on 23 and 24 July 2018
Appearances:	C Hockly for appellants R M Devine, G Baumann and C M Woodward for respondent S J Simons and K A Storer for applicant R B Enright for s 274 RMA parties
Date of Decision:	7 November 2018
Date of Issue:	7 NOV 2018

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DECISION OF THE ENVIRONMENT COURT

A: The decision of Heritage New Zealand Pouhere Tāonga granting Authority No. 2018/064, subject to conditions, is confirmed.

B: Attention is drawn to apparent typographic and other minor errors in the Management Plan and the Research Strategy which should be corrected by Heritage New Zealand Pouhere Tāonga.

C: Costs are reserved. Directions are given for any application.

REASONS

Introduction

[1] This appeal is about whether the modification or destruction of archaeological sites should be authorised in order to enable certain land to be developed for residential purposes.

[2] The subject property consists of two blocks of land comprising 33.42 hectares at 545-561 Oruarangi Road, Mangere.[1] The land is of easy contour, rising slightly from the main road frontage in the southeast towards the Ōtuataua stonefields in the northwest. It is presently mainly in pasture, with two houses and some farm buildings. One of the houses, called Kintyre, is the second homestead of the grantee of the land from the Crown, Mr Gavin Wallace. The property is bisected by Ihumātao Quarry Road running from Oruarangi Road to (now) the entrance to the Ōtuataua Stonefields historic reserve.

[3] To the north-east is the village of Ihumātao and Makaurau Marae. To the east and south-east, across Oruarangi Road, the area is rapidly being developed for light industrial purposes. To the south-west the area remains in rural use, but is zoned for future urban purposes. To the west and north are the Ōtuataua Stonefields, a historic

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1 The property is legally described as Part Allotment 175 and Allotment 176, Parish of Manurewa.

reserve listed as a Category 2 Historic Place,[2] generally zoned for conservation purposes and consisting of nearly all of the remaining volcanic fields around two remnant volcanic cones, Ōtuataua and Pukeiti.

[4] The subject property contains several archaeological sites, including two shell midden relating to Māori occupation and a number of drystone walls and drainage systems, the construction dates of which are disputed. It is these archaeological sites that are the subject of the application by Fletcher Residential Limited (**Fletcher**) to Heritage New Zealand Pouhere Tāonga (**HNZPT**) for an authority under s 44 of the Heritage New Zealand Pouhere Tāonga Act 2014 (**HNZPTA** or the **Act**).

[5] The development of the land for residential purposes is strongly opposed by the appellants and their appeal is against HNZPT's decision in its entirety, seeking that it be reversed. They say in their notice of appeal that the area is an extensive wāhi tūpuna[3] and is raupatu land taken by the Crown in 1863 when the existing Māori population was forcibly evicted. They say further that the known archaeological sites on the land indicate that there are potential sites yet unrecorded, together with sacred caves and lava tunnels. They also say it is the statutory duty of HNZPT to preserve and protect this area of archaeological sites and that its decision fails to provide for the historical and cultural value of the sites or for the purpose and principles of the Act or for the relationship of Māori and their culture and traditions with their ancestral lands, water, wāhi tupuna, wāhi tapu and other taonga. They raise complaints that the investigation of the archaeology of the area is incomplete and that there has been insufficient consultation with tangata whenua.

[6] In response, HNZPT says that the Authority granted by it excludes areas of archaeological sites, including burial caves, the remains of the 19th century Wallace homestead and part of remaining drystone wall features, and is subject to conditions in relation to archaeology that is found during the development process. Its defence of its decision to grant the Authority is supported by Fletcher as the applicant, and by the s 274 parties, Te Kawerau Iwi Tribal Authority and Makaurau Marae Māori Trust, as representatives of tangata whenua.

[7] Fletcher says that residential development of most of the site has been

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2 New Zealand Heritage List/Rārangi Kōrero number 6055, entered on 21 November 1991.

3 Defined in s 2 HNZTPA as a place important to Maori for its ancestral significance and associated cultural and traditional values.

contemplated since 2012 when, by a decision of the Environment Court,[4] the area was brought within the Metropolitan Urban Limit that used to apply under the earlier provisions of the Auckland Regional Policy Statement and zoned for future development. It says further that its proposal was lawfully authorised by its identification as a special housing area in 2014 and by further district plan variations to the Auckland Unitary Plan and by the grant of associated resource consents for subdivision and land use in 2016, all under the Housing Accords and Special Housing Areas Act 2013 (**HASHAA**).

The parties

[8] The appellant, Betty King, is a kuia with an undisputed whakapapa connection to Makaurau Marae. Counsel for Ms King explained that she was unable to attend the hearing because of recent health issues. In light of the indication given by all other parties that they did not wish to cross-examine her, Ms King's attendance was excused.

[9] Pania Newton describes herself as a rangitahi member of Makaurau Marae. She gave no evidence of her whakapapa. She claims to have the support of the Makaurau Marae Committee.

[10] Ngā Kaitiaki Ihumātao Charitable Trust was formed in 2017, and its deed states its purpose as being to "protect the whenua at Ihumātao and provide education about the significance of the whenua at Ihumātao."

[11] SOUL Ihumātao is an unincorporated society formed of Maori and Pākeha residents of Ihumātao and Mangere and other supporters concerned about the archaeology and history of Ihumātao. We understand that SOUL is an acronym for Save Our Unique Landscape.

[12] HNZPT is a statutory entity established under the HNZPTA, responsible for the administration of that Act and relevantly having among its functions:[5]

> (c) To advocate the conservation and protection of historic places, historic areas, wāhi tupuna, wāhi tapu and wāhi tapu areas: …
>
> (e) To issue authorities in accordance with this Act: …
>
> (i) To act as a heritage protection authority under Part 8 of the Resource Management Act 1991 for the purposes of protecting –

4 *Gavin H Wallace Ltd & ors v Auckland Council* [2012] NZEnvC 283.

5 Section 13 HNZPTA.

(i) the whole or part of a historic place, historic area, wāhi tupuna, wāhi tapu or wāhi tapu areas; and

(ii) land surrounding the historic place, historic areas, wāhi tupuna, wāhi tapu or wāhi tapu area that is reasonably necessary to ensure the protection and reasonable enjoyment of the historic place, historic area, wāhi tupuna, wāhi tapu or wāhi tapu area.

[13] Fletcher Residential Limited is a subsidiary of Fletcher Building Limited. It specializes in greenfield subdivision and development, primarily the construction of residential dwellings.

[14] Te Kawerau Iwi Tribal Authority is one of two (together with Te Kawerau Iwi Settlement Trust) representative bodies of Te Kawerau a Maki. The rohe of Te Kawerau a Maki extends from South Auckland and the Tamaki River northwards across the Tamaki isthmus, through Hikurangi (West Auckland) and the lands around the upper Waitematā Harbour and North Shore and into the Kaipara and Mahurangi harbour areas. They are the northern-most iwi of the Tainui waka. They lived for generations at Puketāpapa, but were exiled by the Crown in the 1860s, later returning to their old papa kāinga. It was a party to the plan change proceedings in 2012, when the Ihumātao land was brought inside the Metropolitan Urban Limit.

[15] Makaurau Marae Māori Trust is a charitable trust established in 2004 which is responsible for the management of that marae. It is affiliated to Te Wai-o-Hua who are also tangata whenua in this area. It was also a party to the plan change proceedings in 2012. It is a different entity to the Makaurau Marae Committee.

Statutory provisions

[16] The purpose of the HNZPTA, as set out in s 3 of the Act, is "to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand."

[17] In light of that purpose, all persons performing functions and exercising powers under the Act must recognise the principles set out in s 4:

(a) the principle that historic places have lasting value in their own right and provide evidence of the origins of New Zealand's distinct society; and

(b) the principle that the identification, protection, preservation, and conservation of New Zealand's cultural heritage should—

(i) take account of all relevant cultural values, knowledge, and disciplines;

and

(ii) take account of material of cultural heritage value and involve the least possible alteration or loss of it; and

(iii) safeguard the options of present and future generations; and

(iv) be fully researched, documented, and recorded, where culturally appropriate; and

(c) the principle that there is value in central government agencies, local authorities, corporations, societies, tangata whenua, and individuals working collaboratively in respect of New Zealand's historical and cultural heritage; and

(d) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tūpuna, wāhi tapū, and other taonga.

[18] In s 2 of the Act the term "archaeological site" is defined to include any place in New Zealand that was associated with human activity that occurred before 1900 and that may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand. The term "historic place" is defined to mean any land, including all or part of any archaeological site, and all or part of a building or structure, or any combination of those things that forms part of the historical and cultural heritage of New Zealand.

[19] The words and phrases in Māori in s 4(c) and (d) are interpreted as follows in s 6:

> **tangata whenua** means, in relation to a particular place or area, the iwi or hapū that holds, or at any time has held, mana whenua in relation to that place or area
>
> **wāhi tapu** means a place sacred to Māori in the traditional, spiritual, religious, ritual, or mythological sense
>
> **wāhi tapu area** means land that contains 1 or more wāhi tapu
>
> **wāhi tūpuna** means a place important to Māori for its ancestral significance and associated cultural and traditional values, and a reference to wāhi tūpuna includes a reference, as the context requires, to—
>
> (a) wāhi tīpuna:
>
> (b) wāhi tupuna:
>
> (c) wāhi tipuna

[20] No interpretation is given in s 6 of the Act for the term "mana whenua."

[21] Section 16 of the Act requires HNZPT to adopt, according to the procedure set out in s 17, statements of general policy for the following matters listed in s 17(1)(b):

(i) for the administration of archaeological sites under subparts 2 and 3 of Part 3 and subpart 2 of Part 4; and

(ii) for the historic places owned or controlled by, or vested in, Heritage New Zealand Pouhere Taonga; and

(iii) for the administration of the New Zealand Heritage List/Rārangi Kōrero; and

(iv) for the administration of the Landmarks list; and

(iv) for the statutory role of advocacy conferred on Heritage New Zealand Pouhere Taonga by section 13(1)(c) and on the Council by section 27(1)(i).

[22] Section 20(1) of the Act requires HNZPT not to act inconsistently with any adopted statement of general policy, but s 20(2) provides that no person may require HNZPT to implement any such statement and s 20(3) goes on to provide that failure by HNZPT to comply with such a statement does not affect the validity or enforceability of, among other things, an authority granted by HNZPT.

[23] The principal regulatory provision in the Act is in s 42(1):

> (1) Unless an authority is granted under s 48, 56(1)(b) or 62 in respect of an archaeological site, no person may modify or destroy, or cause to be modified or destroyed, the whole or any part of that site if that person knows, or reasonably to have suspected, that the site is an archaeological site.

[24] The Act sets out a procedure for determining applications for authorities. It is pertinent to note that as well as requiring an authority to carry out an activity in relation to any archaeological site, the applicant for or holder of such an authority must also apply to HNZPT for approval of a person nominated to undertake the activity. The qualifications of such a person are set out in s 45 as follows:

> **45 Application for approval of person to carry out activity**
>
> ...
>
> (2) A person must not be approved to carry out an activity under subsection (1) unless Heritage New Zealand Pouhere Tāonga is satisfied that the person—
>
> (a) has sufficient skill and competency, is fully capable of ensuring that the proposed activity is carried out to the satisfaction of Heritage New Zealand Pouhere Taonga, and has access to appropriate institutional and professional support and resources; and
>
> (b) in the case of a site of interest to Māori—
>
> (i) has the requisite competencies for recognising and respecting Māori values; and
>
> (ii) has access to appropriate cultural support.

[25] An application for authority must also be accompanied by information set out in s 46(2) as follows:

> **46 Information that must be provided with application for authority**
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> ...
>
> (2) An application must include the following information:
>
> ...
>
> (g) except in the case of an application made under section 44(b), an assessment

of—

(i) the archaeological, Māori, and other relevant values of the archaeological site in the detail that is appropriate to the scale and significance of the proposed activity and the proposed modification or destruction of the archaeological site; and

(ii) the effect of the proposed activity on those values; ...

[26] HNZPT has a broad discretion under s 48 to grant an authority in whole or in part subject to any conditions it sees fit, or to refuse to grant an authority. It must make its determination in accordance with the requirements of ss 49-52.

[27] A right of appeal in relation to the exercise of the power to determine an application for an authority is conferred by s 58 on "any person who is directly affected by the exercise of [that] power". Section 59(1) provides:

59 Decision on appeal

(1) In determining an appeal made under section 58, the Environment Court—

(a) must, in respect of a decision made on an application made under section 44, have regard to any matter it considers appropriate, including—

(i) the historical and cultural heritage value of the archaeological site and any other factors justifying the protection of the site:

(ii) the purpose and principles of this Act:

(iii) the extent to which protection of the archaeological site prevents or restricts the existing or reasonable future use of the site for any lawful purpose:

(iv) the interests of any person directly affected by the decision of Heritage New Zealand Pouhere Taonga:

(v) a statutory acknowledgement that relates to the archaeological site or sites concerned:

(vi) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tūpuna, wāhi tapu, and other taonga; and

(b) may confirm or reverse the decision appealed against or modify the decision in the manner that the Environment Court thinks fit.

...

Relevant case law

[28] The continuity of approach between the Historic Places Act 1993 and the current Act is confirmed in s 5 of the latter which is headed "What this Act does":

(2) This Act ...

(e) continues to prohibit the modification or destruction of an archaeological site unless an authority for the modification or destruction is obtained from Heritage New Zealand Pouhere Tāonga under this Act...

[29] In *Te Aro Heritage Trust v New Zealand Historic Places Trust (Pouhere Taonga)*,[6] the Environment Court summarised the approach as follows:

> [372] The case law supports the contention that while the principles in s 4(2) [now, s 4] recognise that historic places have intrinsic value..., they contemplate the alteration to or loss of sites of cultural heritage value (although seeking minimization of this) ...
>
> [373] The purpose of the HPA has been considered in *Ngati Wai Trust Board v Historic Places Trust (Pouhere Taonga)*[7] (and subsequently in *Taipari*[8]) where it was held that the Act contemplates the destruction or modification of archaeological sites in appropriate circumstances:
>
> > We have already quoted s 4 of the Historic Places Act which sets out the purpose and principles of the Act. We accept that they need to be understood according to their context. Relevantly, the references to protection and preservation need to stand with the provisions of Part I of the Act which empower the Historic Places Trust to authorise destruction of archaeological sites in appropriate cases. The Act contemplates that any destruction or modification will be done under controlled circumstances, so that the full historical record that may be available is obtained. ...
> >
> > The principles of the Act do not necessarily require the retention in situ of all archaeological remains. Depending on the intrinsic value of the site, the principles may be recognised by providing for careful investigation, recording of deposits under appropriate supervision, reporting of findings, and curation and storage of selected materials.

[30] It is also clear that the relevant statutory frame in which this appeal must be determined is that provided by the HNZPTA, and not the RMA. While the procedural provisions for this appeal are those in the RMA,[9] and while the listing of matters to which this Court must have regard in s 59(1) does not limit our powers under the RMA,[10] our judgment of the issues arising in this appeal and our determination must be undertaken in light of the purpose and principles of the HNZTPA. As the Court said in *Tuhakaraina & Ors v Pouhere Taonga (New Zealand Historic Places Trust)*:[11]

> ... It is not open to us to embark upon an appraisal as though these proceedings were directed to broad district planning issues under the RMA. That is not to say, of course, that the site should be viewed in a vacuum, without regard to a wider context or perspective, in order to assess its historical and heritage value. In fact, the evidence for the Applicant and the Trust was at pains to assess the site in the wider sense by carefully reviewing its nature, form and position, its age, its scarcity/commonness, its state relative to other midden sites, its degree of significance in terms of the value perspectives pointed to under the legislation, and the practical effect on the subdivision should the site be required to remain.

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6 *Te Aro Heritage Trust v New Zealand Historic Places Trust (Pouhere Taonga)* Decision W52/2003.

7 *Ngati Wai Trust Board v Historic Places Trust (Pouhere Taonga)* [1996] NZRMA 222 at [233]-[234].

8 *Taipari v Pouhere Taonga (New Zealand Historic Places Trust)* Decision A102/97.

9 Section 58(4) HNZPTA 2014.

10 Section 59(2) HNZPTA 2014.

11 *Tuhakaraina & Ors v Pouhere Taonga (New Zealand Historic Places Trust)* Decision A0121/2004 at [14].

[31] Under the current Act, the Court has noted that the focus must be on particular archaeological sites and not the wider area. In *Greymouth Petroleum Limited v Heritage New Zealand Pouhere Tāonga*,[12] the Court said:

> [38] We consider that it is abundantly clear from [s 46(2)] that the sections of the Act under consideration are directed at the protection of archaeological sites themselves and not wider areas beyond them. It is correct that the matters identified in s 59(1)(a) of the Act, which might be considered when determining an application under s 44, are very wide in scope, but they are clearly matters which must apply to the archaeological site in respect of which an application has been made. Section 59(1)(a)(i), (iii) and (v) specifically state that.

[32] Discussing the issue of whether the provisions of the Act applied so as to protect a "broader cultural landscape", the Court held that it did not. The Court accepted submissions that the respective schemes of the HNZTPA and the RMA are clearly that:

(i) Heritage New Zealand regulates physical interference by modification or destruction of archaeological sites under the HNZTPA;

(ii) Local authorities regulate land use through the use of local planning instruments, including any other form of interference with archaeological sites; and

(iii) Heritage NZ can have a role in local authority processes under the RMA as a Heritage Protection Authority, including by way of the New Zealand Heritage List/Rarangi Korero and/or by way of the use of Heritage Orders under the RMA.

[33] A recent example of a case under the RMA where the significance of the cultural landscape was relevant to determining which rules to regulate land use were the most appropriate is *Self Family Trust v Auckland Council,*[13] where the cultural values associated with certain land were found to be a reason not to bring that land within Auckland's Rural Urban Boundary, and therefore not to allow urban development on it.

The decision of HNZPT

[34] The decision of HNZPT which is the subject of this appeal is the grant of Authority No: 2018/064 on 27 September 2017 to Fletcher Residential Limited in respect of land at 545-565 Oruarangi Road, Māngere, also known as Part Allotment 175, Parish of Manurewa, Allotment 176, Parish of Manurewa and the Ihumātao Quarry Road reserve

12 *Greymouth Petroleum Limited v Heritage New Zealand Pouhere Tāonga* [2016] NZEnvC 11.

13 *Self Family Trust v Auckland Council* [2018] NZEnvC 49.

(**the Authority**). The Authority refers to Archaeological Sites R11/2997, R11/3000 and R11/3090 and "potential sites as yet unrecorded" and names Dr Rod Clough as the approved archaeologist. It states an expiry date of 27 September 2022.

[35] The Authority authorises Fletcher Residential in respect of "the proposal to undertake works required for residential subdivision at 545 – 561 Oruarangi Road, Mangere, subject to the following conditions:" There are ten conditions which require:

(i) briefing of all contractors by the approved archaeologist at the start of each stage of works on the possibility of encountering archaeological evidence and what to do if that happens;

(ii) the Authority to be exercised in accordance with the management plan attached to the application;

(iii) all earthworks to be monitored by an archaeologist approved by HNZPT;

(iv) any archaeological evidence encountered to be investigated, recorded and analysed;

(v) prior to earthworks commencing, the carrying out of an archaeological investigation of the listed archaeological sites in accordance with the research strategy submitted with the application;

(vi) HNZPT to be satisfied with the completion of that investigation and given its written approval before the next stage of works;

(vii) after consultation with tangata whenua and HNZPT, and subject to HNZPT's satisfaction, the erection of a public interpretation panel in the application area referencing the findings of investigations under the Authority;

(viii) specific provision for access by and information, notification and reporting to tangata whenua;

(ix) interim reports and updated or submitted site records to HNZPT; and

(x) final reports to HNZPT with copies to tangata whenua, the University of Auckland and the Auckland Museum.

[36] A plan is attached to the Authority, being Harrison Grierson Drawing No: 136537-01-081 Rev A dated 21.06.17 for the project Fletcher Living Special Housing Area

Oruarangi Road and titled "5m Construction buffer and area to be excluded from the Authority application." This plan shows the subject land divided into five areas: two stage areas, an area excluded from the Authority application, the extent of Stage 1 and 2 earthworks and a balance area. It also shows a boundary between the balance area and the excluded area which includes a "5 metre construction buffer" and the "extent of construction area for Authority application. A reduced copy of this plan is **attached** as **Appendix A**.

Standing to appeal

[37] Section 58(1) of the Act provides:

> Any person who is directly affected by the exercise of the power referred to in subsection (2) may appeal against that decision by notice of appeal to the Environment Court.

[38] Among the powers listed in s 58(2) is the power under s 48 to determine an application for an authority. HNZPT's determination of Fletcher's application for an authority is the subject matter of this appeal.

[39] Fletcher challenges the standing of three of the appellants:

(i) Ms Newton;

(ii) Ngā Kaitiaki o Ihumātao Charitable Trust; and

(iii) SOUL Ihumātao.

[40] Counsel for Fletcher refers to *Campaign for a Better City v New Zealand Historic Places Trust*,[14] where the High Court held that effect has to be given to the word "directly" and found that some of those who could be said to be "directly affected" by a decision could include:

(a) any person with proprietorial interest in the land;

(b) the applicant for the authority the subject of the appeals;

(c) tangata whenua who are linked to the site through their ancestry; and

(d) other persons without a proprietorial interest in the land, such as children and grandchildren being directly affected by a proposal to dig up a grandparent's

14 *Campaign for a Better City v New Zealand Historic Places Trust* [2004] NZRMA 493 (HC)

grave.

Whether any such person was "directly" affected is a matter to be determined on the evidence.

[41] The High Court also held that a feeling of attachment based on reasons other than a proprietorial interest (or, presumably, an ancestral connection) is not enough, and it is necessary to look at underlying facts which establish the attachment.

[42] The relationship of Māori to a site or area was considered in *Ngāti Wai Trust Board v NZ Historic Places Trust*,[15] where the Court said at [382]:

> Tangata whenua whether iwi, hapu, whanau or other grouping ought to be able to choose some representative, whether an individual or individual natural persons, or some organisation, corporate or incorporate, to represent them and to act for them as the vehicle or the conduit of their interest as those directly affected. Those persons, those representatives should not be debarred from being treated likewise as directly affected and being entitled to be the nominal appellant. It will be a question in each case whether there is an adequate mandate or authority, and whether those who have given that mandate or authority are truly directly affected in the particular circumstances of the case.

[43] Counsel for Fletcher accepted that Ms King had given evidence of her ancestral connection, through her whakapapa, to the area including the site. However, counsel submitted that there was no evidence of a similar kind presented by or on behalf of Ms Newton, Ngā Kaitiaki o Ihumātao Charitable Trust or SOUL Ihumātao.

[44] This position was supported by HNZPT and by Te Kawerau Iwi Tribal Authority Inc and the Makaurau Marae Māori Trust, who also accepted that Ms King has standing.

[45] HNZPT submitted, however, that this appeal should proceed on the basis that Ms King's unchallenged standing meant that the appeal should not be struck out and, further, that there is no need for the Court to make any definitive findings on whether or not any of the other appellants is a directly affected person.

[46] In the particular circumstances of this case, the Court agrees with HNZPT's submission. In the absence of any challenge to Ms King's whakapapa, we accept her standing as an appellant. Thus, even if we were to strike out the other appellants, the appeal would remain on foot in Ms King's name. As the issues on appeal relate to heritage issues and the appropriateness of HNZPT's decision rather than to any matter which is personal to any of the parties, there is no need for us to determine the standing

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15 *Ngāti Wai Trust Board v NZ Historic Places Trust* [1998] NZRMA 1 (HC)

of the other parties in order to consider the issues on appeal. This renders the strike-out issue moot. Without making any determination that any other appellant has standing, we accordingly decline to strike out any of the appellants as parties to this appeal.

Evidence

[47] Twelve statements of evidence were lodged with the Court and eleven witnesses were called, gave evidence and were cross-examined.

[48] For HNZPT we received statements from Beverley Parslow, the area manager and archaeologist for the mid-northern region of HNZPT, and from David Robson, the manager of the Maori heritage team for the northern region of NZHPT and who is also an archaeologist. This evidence recounted the process followed by HNZPT is dealing with Fletcher's application, the matters considered in reaching a decision on it and the conditions imposed.

[49] Both witnesses were cross-examined by counsel for the Appellants and generally confirmed their evidence in chief and in particular their opinions that the grant of the Authority, subject to conditions, was appropriate. In particular, Ms Parslow opined that the site was not unique in the region, referring to other sites in South Auckland which contained evidence of garden activities by tangata whenua.

[50] For Fletcher we received a statement from Steven Evans, the Chief Executive – Residential and Land Development of its parent company, Fletcher Building Ltd. Mr Evans addressed the background to Fletcher's application, the development plan for the site, the consultation undertaken with iwi and the matters challenged by the appeal.

[51] We also received statements from two independent archaeologists advising Fletcher, Dr Rod Clough and Kim Tatton. Dr Clough was involved in the preparation of the application for the Authority, including the archaeological assessment report which accompanied it. Ms Tatton was involved in a detailed examination and record of the drystone walling and associated farm features which formed part of the archaeological assessment report for the Authority.

[52] Dr Clough addressed the archaeology of the site and the effects on it of the proposed development by Fletcher, including the assessment which he and his associates undertook. This assessment included archival research, geophysical

scanning, subsurface testing, and consultation with iwi and with archaeologists for HNZPT. He described the area as a significant archaeological and heritage landscape, being demonstrably the most significant area of Māori settlement around the Manukau harbour and also being a historic European farming landscape. In his view, however, the identified archaeological sites of the two midden and the European drystone walls have no more than moderate archaeological value either individually or in terms of their contribution to the landscape. He noted the potential for additional unidentified subsurface remains relating to Māori occupation, including gardening which would have archaeological value through the information that would be obtained through archaeological investigation (that is, as we understand it, excavation and recording).

[53] Dr Clough also responded to the criticisms of his archaeological assessment report by Mr Lawlor, particularly the dating of the drystone walls and the value of them. Mr Lawlor opined that the walls actually indicated earlier Maori field boundaries while Dr Clough was of the view that the walls better correlated to the cadastral boundaries surveyed in 1866. Mr Lawlor regarded the walls as unique and rare at least in the region and possibly nationally, while Dr Clough pointed to other examples, including on the neighbouring reserve. Dr Clough was of the view that the assessment had been comprehensive.

[54] Dr Clough also gave evidence of the Archaeological Management Plan and the Research Strategy which accompanied the application and of the basis for his opinion that they are appropriate. He concluded that in view of the archaeological values of the land and the extent to which parts of the land were excluded from development to reduce adverse effects on archaeological, heritage and cultural values, the Authority had been appropriately granted.

[55] Ms Tatton's evidence was focussed on the drystone walls and associated farm features, including field drainage, on the Wallace Farm. The development of the land will result in substantial lengths of drystone wall being removed, while some walls, principally on the boundaries of the site, will be retained and protected. Ms Tatton responded to the evidence of Mr Lawlor about the origin of these walls. The main area of dispute, as we understood it from the evidence, was whether any of the walls pre-dated 1866, when the land was taken from tangata whenua and granted to Mr Wallace. Ms Tatton had interviewed Ms Ailsa Blackwell, the grand-daughter of the grantee of the land from the Crown, as part of an oral history project when land was being acquired to form the historic reserve. Ms Blackwell had recalled her family history that the walls had been built by or

at the direction of her grandfather and her father. Ms Tatton was of the opinion that the walls did not pre-date 1866. Ms Tatton did not accept Mr Lawlor's challenges to that opinion or to the evidence on which it was based.

[56] Ms Tatton expressed the view that the examination, documentation and recording of the features of these walls had been done to accepted standards and that little further information could be gained without dismantling the walls and excavating the foundations.

[57] For the appellant, we received two statements from Ms Newton, one from Ms King, one from David Veart, a consulting archaeologist and two from Ian Lawlor, also a consulting archaeologist.

[58] Ms Newton addressed applications to HNZPT to recognise Ihumātao as wāhi tupuna and to elevate the reserve to a category 1 site, the lack of consultation with beneficiaries of the Marae, the historical importance of the site, and the support the appellants had received from the wider community.

[59] She also produced three reports dated 21, 26 and 30 April 1866 of the Native Compensation Court in respect of land at Ihumātao. These Compensation Courts were established under the New Zealand Settlements Act 1863 with jurisdiction to award compensation for land taken for settlements for colonization, provided that no compensation could be granted to any person who had made war or carried arms against the Crown or adhered to, aided, assisted or comforted such persons. This statute was one of the principal legal mechanisms by which the confiscation of land, or raupatu, was carried out by the colonial government of New Zealand.

[60] When asked by the Court what a good outcome would be in this case, Ms Newton said that her vision was to see this whenua protected, preserved and conserved as a public open space, returned to the mana whenua and reclaimed to what it was once used for, growing food and honouring the significance of the whenua to all people. She wanted other land made available for residential development and characterized the designation of the area as a special housing area as a mistake.

[61] Ms King's evidence addressed her connections to the land, the lack of consultation with her, the applications for better protection of the land, the finding of bones on the land by her brothers and the extent of community interest in and support

for her position. While her statement of evidence has been read by the Court, her unavailability to answer questions necessarily reduces the weight that can be given to it.

[62] Mr Veart submitted that the Authority had been issued contrary to the stated policies of NZHPT and best archaeological practice. He criticised a lack of assessment of the total remaining archaeological resource available and the relative importance of the affected area within the larger context of archaeological sites.

[63] Mr Veart had been involved in preparing a report which had led to the purchase of land to become the historic reserve. He noted that sites of the type here, being garden/settlement sites on volcanic ash soils, were to be found all over the Ihumātao area but are threatened by development. In the absence of any assessment of the total remaining number of such sites and their relative importance, he criticised the issuing of authorities such as the one that is the subject of this appeal as HNZPT acting blind, contrary to Policy 1 of its own Statement of General Policy on the administration of the archaeological provisions under the HNZPTA 2014.[16] He said that the grant of the Authority ignores Policy 1.7[17] which requires the exploration of practical alternatives and Policy 7.1[18] which encourages in situ retention of archaeological deposits.

[64] Mr Veart also referred to the Statement of General Policy on HNZPT's statutory role of advocacy. He said that advocacy is a key tool available to HNZPT for the preservation of heritage, but had been ignored in this case.

[65] Mr Veart addressed the special quality of this site and said that this Authority would effectively obliterate the archaeological values of the site except for some buffer areas. He referred to the 2012 decision of the Environment Court[19] and expressed the view that the present proposal was inconsistent with what had been said in that case. He criticised the development of a quiet and isolate rural feature into a suburban park and the lack of maintenance of the historic reserve.

16 Policy 1.1 reads: "HNZPT promotes the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand in carrying out its regulatory functions for archaeological sites."

17 Policy 1.7 reads: "Prior to submitting an archaeological authority application, HNZPT expects applicants to have explored practical alternatives to avoid or limit the modification or destruction of archaeological sites."

18 Policy 7.1 reads: "HNZPT encourages the retention of in-situ archaeological deposits where practicable."

19 *Gavin H Wallace Ltd & Ors v Auckland Council* [2012] NZEnvC 283.

[66] Mr Lawlor presented two statements of evidence including extensive material based on his research into the mapping and surveying of the Manukau Harbour and the surrounding land. He particularly described the survey work (both hydrographic and terrestrial) undertaken by those on board *HMS Pandora* for the Admiralty in 1853. He advanced his critiques of the work done by Dr Clough and Ms Tatton referred to above and the basis for his opinions as to the likely dating of the drystone walls. In his opinion, HNZPT mistakenly granted the Authority based on a weak assessment with flawed assumptions and evaluations. He contended that primary historical material had not been adequately considered, that the oral history of Ms Alisa Blackwell, the granddaughter of Gavin Wallace, had been given undue weight, and that relevant landscape, hydrological and geomorphological discussion was missing. In his view, these faults resulted in incomplete analysis and subjective evaluations.

[67] Mr Lawlor also said that the process, from application to determination, had failed to consult with or recognise and provide for all directly affected landowner interests, including those of neighbours on the other side of boundary walls. He described the application as not being sufficiently robust to be relied on to the extent that HNZPT had failed in their statutory duty to protect the archaeological sites covering the property. He pointed to the cumulative effects of development and the resulting destruction of archaeological and historic heritage in South Auckland which he said were not recognised in this determination.

[68] For Te Kawerau Iwi Tribal Authority we received the statement of Edward Ashby, the executive manager of that authority and the related settlement trust. Mr Ashby is qualified in anthropology and forensic science but was not giving evidence as an expert witness. Rather, his focus was on the iwi's status, its involvement with the site and the proposed development, and its views on mitigation and offsetting. He referred to a cultural impact assessment which he prepared in 2015 and which he attached to his evidence.

[69] That assessment clearly sets out the connections of Te Kawerau a Maki with this land and identifies the grievances arising from the confiscation of the land. It identifies and assesses the likely adverse effects associated with development of the land. It also recounts the opposition of Te Kawerau a Maki in 2012 to the inclusion of the land within the Metropolitan Urban Limit and in 2015 to the designation of the land as a Special Housing Area. Notwithstanding those matters, the assessment also notes that the land is privately owned and that the failings laid at the feet of the Crown are not necessarily to

be attached to the landowner. Faced then with the prospect of development of the land and little legal ability to stop it, Te Kawerau a Maki decided to work with the landowner and Mr Ashby went on to describe the things done to minimise the impact and ensure mitigation and offsetting as an outcome. Mr Ashby stated that this decision did not come lightly, but that as full protection was unlikely, it was better to achieve some mitigation and offsets.

[70] These things include setting aside a protection area for the lower slopes and lava caves of the maunga and a buffer area or separation distance between the papakāinga at Ihumātao and the new development, resulting in a significant reduction in the developed area and hence the yield of housing. Also included are a co-designed stormwater treatment approach, the principle of a cultural facility in the structure plan rules, and agreement with Fletcher to approach the Auckland Council to have development contributions applied in the papakāinga and for an iwi housing strategy in the development. Specific recognition of cultural values included discussion with kaumatua and walking the land to map the protection boundaries and then agree on this with Fletcher. This includes a viewshaft from the papakāinga to the maunga and a limit in density of the southern corner.

[71] Mr Ashby acknowledged that other iwi could be acknowledged as tangata whenua in this area, noting that Tamaki is a popular place.

[72] Makaurau Marae Māori Trust adopted Mr Ashby's evidence.

[73] The Court undertook a site visit after the hearing to view the land and the surrounding area, including the historic reserve and Ihumātao.

Evaluation

[74] The starting point in determining this appeal is the scope of the Court's jurisdiction under s 59 HNZPTA. That provision empowers us to review the decision by HNZPT on Fletcher's application for an Authority and confirm or reverse that decision or modify it in the manner that we think fit. In doing so, we must have regard to any matter we consider appropriate, including the matters listed in s 59(1)(a).

[75] In determining what matters we consider appropriate, and in making our decision in the manner that we think fit, we are not left by the law to do whatever we like. Our

determinations must be made for the purpose for which we are empowered to make them and according to the principles which support that purpose. Our discretions must be guided by these provisions according to reason and justice and not by personal opinion.

[76] We have already set out above the relevant statutory purpose and principles in the HNZPTA and we proceed in this evaluation with those provisions in mind. We have also had regard to the statements in relevant case law, as set out above. It is within the purpose set out in s 3 of the Act, and not contrary to the principles in s 4, to grant an authority under s 48 for the modification or destruction of an archaeological site: that is clearly the effect of the exception to the protection of s 42. As was said in the *Te Aro Heritage Trust* decision quoted above at [29],[20] the principles of the Act do not necessarily require the retention in situ of all archaeological remains.

[77] We have also considered the statement of general policy for the administration of the archaeological provisions of the Act to which Mr Veart referred and the duty imposed on HNZPT by s 20(1) of the Act to act consistently with that and other such statements which HNZPT must prepare and adopt under the Act. It is clear from s 20(2) that this duty is not directly enforceable and from s 20(3) that a failure to comply does not affect the validity of an authority. The case law generally does not address HNZPT's general policies.

[78] A statement of policy of this kind must be considered as a whole in the context of the legislation under which it has been drafted. It appears from the clear limits of the duty in s 20 of the Act and the extent of the factors relevant to the making of a determination by HNZPT in s 49 and of a decision by the Court on appeal in s 59 that these statements of general policy are primarily for the purpose of HNZPT's internal management when considering an application for an authority, rather than as factors against which its determination is to be assessed. To the extent that the policy refers to matters such as the exploration of practical alternatives to destruction of sites and the encouragement of in situ retention of them, HNZPT is setting out what it considers to be good practice in a public document that may assist in people's understanding of its internal processes. Such transparency is a desirable goal of public administration, but a policy document of this kind does not alter the law, nor does it have legal effect in the absence of any statutory provision which gives it effect.[21]

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20 *Te Aro Heritage Trust v New Zealand Historic Places Trust (Pouhere Taonga)* Decision W52/2003.

21 *Van Gorkom v Attorney General* [1978] 2 NZLR 387 (CA) at 390-391; *Keam v Minister of Works and Development* [1982] 1 NZLR 319 (CA) at 322; *R (Alconbury Ltd) v Secretary of State for the*

[79] The particular policies referred to by Mr Veart do not constrain our consideration of the appeal under s 59 of the Act. Indeed, read as a whole, the premise of the statement of general policy for the administration of the archaeological provisions is that there will be authorities granted under s 48 and the particular policies do not further regulate the statutory provisions relating to the grant of authorities. We do not consider the statement of general policy on the statutory role of advocacy to be directly relevant to our consideration of the regulatory processes relating to decisions on authorities.

[80] While the scope of our consideration under s 59(1)(a) is worded inclusively, as with any exercise of discretion we must be careful not to treat that wording as expanding our authority beyond the reasonable bounds of what is appropriate having regard to the purpose and principles of the Act. In particular, we do not think there is any support in the HNZPTA for the argument that we must, on appeal, either review the adequacy of HNZPT's determination, or make our own, based on a consideration of alternatives. The primary matter for our decision under s 59(1)(b) is whether the grant of an authority in respect of the application made to HNZPT should be confirmed or reversed having regard to the matters listed in s 59(1)(a).

[81] We may modify the decision "in the manner that the Environment Court thinks fit." We think this would usually be by considering the appropriateness of the conditions attached to the Authority, but which may include the physical extent of the authorised works. Our discretion to modify the decision is not unlimited. We note that under the RMA, the validity of planning conditions is assessed according to the principles set out in the decision of the House of Lords in *Newbury*,[22] namely:

(a) that conditions imposed must be for a planning purpose and not for any ulterior one; and

(b) that they must fairly and reasonably relate to the development permitted; and

(c) that they must not be so unreasonable that no reasonable planning authority could have imposed them.[23]

These considerations have been held to be of general application in New Zealand law.[24]

Environment [2001] UKHL 23, [2003] 2 AC 295 at [143]; *Earthquake Commission v Insurance Council of New Zealand Inc* [2014] NZHC 3138; [2015] 2 NZLR 381 at [152] – [155].

22 *Newbury District Council v Secretary of State for the Environment* [1980] AC 578; [1980] 1 All ER 731 (UKHL(E)).

23 Using *unreasonable* in the administrative law sense as stated in *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223.

24 *Housing New Zealand Limited v Waitakere City Council & Anor* [2000] NZCA 392 at [18].

In our opinion, with appropriate modifications for the context of the HNZPTA, the same considerations should apply to conditions of authorities under that Act.

[82] We have reviewed the Authority and its conditions in that light. At the outset we note that the listed considerations in s 59(1)(a) and the common law considerations stated in the *Newbury* case require us to undertake our evaluation in the circumstances that apply to existing situation of the case and not in an abstract setting. In particular, in this case we must bear in mind that Fletcher's application follows earlier planning decisions which materially affect the existing situation, being the decision of the Environment Court[25] bringing this land within the Metropolitan Urban Limit and the decisions of the Auckland Council making the site a Special Housing Area in 2014 and granting consents for subdivision and development of the site in 2016. In these cases, cultural, heritage and archaeological issues were addressed.

[83] The conclusions of the Environment Court were as follows:

> [89] We therefore find that a degree of sensitive urban development, appropriately constrained, would better give effect to the single purpose of the Act, than a total restraint on future development. We discuss appropriate restraints later in this decision.
>
> ...
>
> [126] We are conscious of the strong directions contained in Part 2 protecting historic heritage from inappropriate development; and recognising and providing for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.
>
> [127] These strong directions are emphasised in the Strategic Objectives and Policies and other provisions of the ARPS. However, we are satisfied that Maori values and heritage characteristics can be provided for and/or adequately protected by sensitive development with appropriate constraints. This will, at the same time, enable the landowners to provide for their social and economic needs in accordance with Section 5 of the Act. A need which cannot be achieved while this land has a rural zoning because appropriate rural uses are not a viable option.
>
> [128] To keep the land outside the MUL, with a rural zoning, would without further constraints, offer less protection to the characteristics protected by Section 6(e) and (f) of the Act. To lock the land up might indeed provide for Maori and heritage values. But it would not provide for the economic needs and well-being of the owners. By allowing sensitive constrained development, heritage and landscape characteristics can be protected while at the same time allowing the owners to provide for their economic well-being.
>
> [129] We are also conscious of the strong directions relating to amenity and the coastal environment in Part 2 of the Act. These directions are also emphasised in the provisions of the ARPS. Again, we are satisfied, that some urban type development with proper constraints could adequately satisfy those directions.
>
> [130] We accordingly find that an extension of the MUL to include the subject land would reflect the sustainable management provisions provided for in the framework of Part 2 of the Act.

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25 *Gavin H Wallace Ltd & ors v Auckland Council* [2012] NZEnvC 283.

[84] In the part of its decision dealing with an appropriate zoning, at paragraph [155] the Court decided that a Future Development Zone would be appropriate to provide for:

> A succinct description and explanation of the subzone and its context which:
>
> [i] Identifies and provides for the significant characteristics of the area, including:
>
> - Maori cultural associations with the area, including wahi tapu;
> - Heritage and historic associations;
> - The Otuataua Stonefields Historic Reserve;
> - Landscape and amenity values;
> - The Manukau Harbour and coastal environment; and
> - The Auckland International Airport and business zoned lands.
>
> [ii] Requires that a. future structure planning process for the subzone:
>
> - Further identifies and recognises these significant characteristics;
> - Determines the location and density of urban development selectively; with urban activities
> - concentrated in nodes and areas of open space and lower intensity development; and
> - Provides for efficient and effective servicing and an Integrated Transport Assessment (ITA).

[85] The Appellants argued that no proper structure planning process had occurred and that this meant that a full review of the planning framework was required. We do not accept that argument. The Court did not specify what the process would be. While it is almost certainly true that the Environment Court in 2012 did not foresee the process that would be initiated under the HASHAA, on a substantive basis the HASHAA process was, in 2016, a lawful means by which a landowner could seek to rezone a future development area and obtain consents for development of that area. The significant characteristics identified by the Environment Court were addressed in that process and the consents granted make provision for the recognition and protection of them to a degree.

[86] As Mr Ashby said on behalf of Te Kawerau a Maki, these were not the outcomes that iwi wanted, but having occurred, iwi would now work with the developer to seek recognition of and provision for the concerns of iwi. We can understand that the degree to which recognition and protection have been implemented in the zoning of the land and the granting of consents may not be as great as iwi and others may have wanted, but this appeal is not an appropriate forum in which to pursue such matters as we do not have any power to revisit those earlier decisions. We must assess the matters listed in s 59(1)(a) of the Act in light of the current situation.

[87] In considering whether to confirm or reverse the decision of HNZPT, we have carefully considered the evidence, particularly that of the archaeologists. We have been assisted by their comprehensive joint witness statement dated 25 May 2018. In particular

we have considered whether the unresolved issues among the archaeologists present any basis on which to reverse HNZPT's decision.

[88] We are not persuaded by Mr Lawlor's arguments that the historical survey evidence provides a basis, on the balance of probabilities, to reverse the decision. We do not consider that the Court needs to resolve the issue of when the walls were built, because the difference between the competing opinions is not so great as to affect the decision. In terms of archaeology, we accept Ms Tatton's opinion that there is little more that can be learned from the drystone walls without further archaeological investigation. We understand that such investigation would mean taking the walls apart and excavating their foundations in order to examine them and record that examination. In terms of the intrinsic value of the walls we are not persuaded that they are unique or otherwise have sufficient historic value to require their retention in situ and consequently require reconsideration of the development of the land.

[89] The archaeological sites which are known to be affected do not present such historical and cultural heritage value as to prevent or further restrict the reasonable future use of the site for the lawful purposes enabled by the existing zoning and resource consents. We consider, in the context of the present circumstances following the decisions which enable the land to be developed, that the heritage values of the site, including any that may yet be discovered during the development process, can be appropriately recognised and provided for through the Archaeological Management Plan and the Research Strategy.

[90] We acknowledge that the relationships of Māori with these lands, and in particular those of Te Kawerau a Maki and Te Wai-o-Hua, have been adversely affected for a long time. We accept the evidence of Mr Ashby that the present situation is not the best that tangata whenua would have wanted, but that in the circumstances it is better to work with Fletcher and obtain such recognition and opportunities as they can. We commend both sides for seeking a constructive basis on which to advance their respective positions.

[91] We consider that the interests of persons directly affected by HNZPT's decision, including the relationship of Māori and their culture and traditions with these ancestral lands, sites, wāhi tupuna, wāhi tapu and other taonga, have been considered and that the terms of the Authority and the extent of the resource consents makes some provision for those interests.

[92] In considering whether to modify the decision of HNZPT, we have reviewed the conditions including the Management Plan and the Research Strategy which accompanied Fletcher's application and which are incorporated in to the conditions of the Authority by reference.

[93] In our review of the Management Plan, we found it to be comprehensive. In some cases, Fletcher has provided for a greater level of protection than required by the Authority. For example, in relation to kōiwi, condition 8(c) of the Authority forbids work within 5 metres of a discovery. In the Management Plan the words "immediate vicinity" are referred to several times and this distance is identified on page 13, para 1 as being 10 metres. The provision of a distance that is greater than the minimum identified in the Authority is an added factor of safety and therefore a benefit to such protection.

[94] There were a few minor matters in the Management Plan which could cause confusion but should be easily amended by HNZPT:

(i) While the timeframes for "Before Wall Demolition" on page 8 and "Site Management: Earthworks" on page 12 are clear, the "Stand Down Periods" could be better defined. Although the stand down periods are stipulated in the Table, the deciding factor should be that work only re-starts on the advice of the Archaeologist, whatever the relevant stand down period may be stated as.

(ii) On page 8, in the section on "During Wall Demolition", the first two paragraphs refer to "the Archaeologists will be present …", however, in paragraph 5 of the same section it says "… will be recorded by the Archaeologist if present…". Although paragraph 5 may be catering for some practical reasons why the Archaeologist may not always be present, we think that the requirements for the Archaeologist to be present, or not, should be consistent throughout this section.

[95] In our review of the Research Strategy, we considered that the research questions are comprehensive and addressed many of the concerns raised by Mr Lawlor.

[96] We note that in the "Investigation Methodology" on page 9, the heading refers to **Midden R11/2997 and R11/2998**. In the site record forms that accompany the application, R11/2997 refers to the midden to be destroyed but R11/2998 refers to the first Wallace homestead. The other affected midden is R11/3090. If we understand these

references correctly, the heading should read **Midden R11/2997 and R11/3090**. This is also a matter that should be amended by NZHPT.

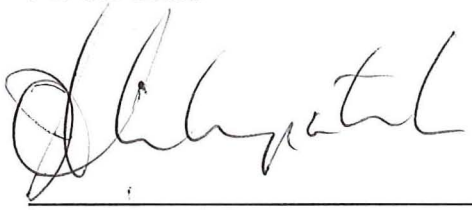
Decision

[97] Having regard to all the matters factors listed in s 59(1)(a) of the Act, and to our assessment and evaluation of the evidence set out in our reasons, we are satisfied that the decision by HNZPT to grant the Authority should be confirmed.

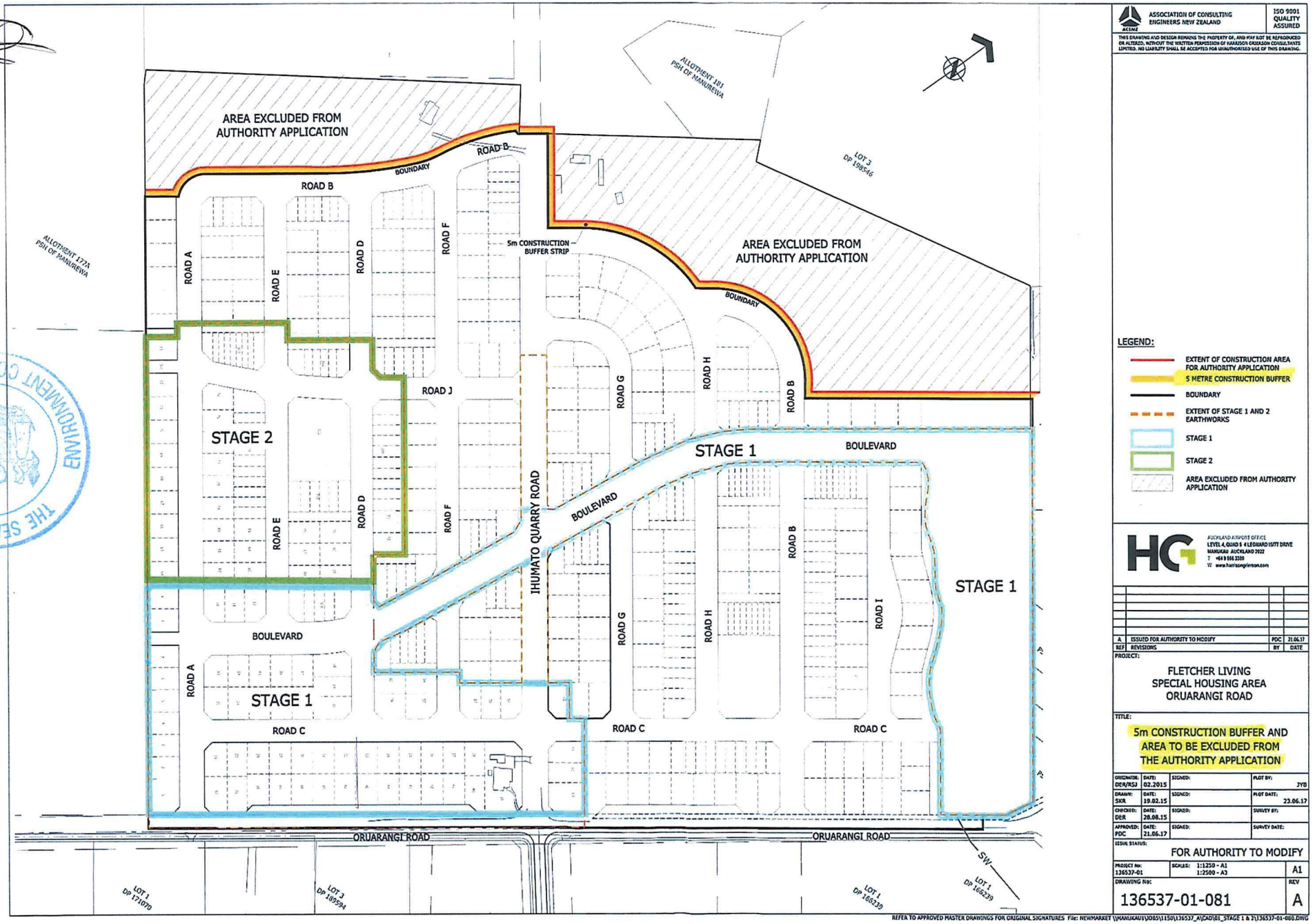
[98] We have drawn attention to certain matters in the Management Plan and the Research Strategy which appear to us to be typographical or other minor errors capable of being corrected by HNZPT, either as modifications pursuant to s 59(1)(b) or by review under s 53.

[99] We reserve the issue of costs. Without encouraging any application, we direct that any party who seeks costs must apply within 15 working days of this decision and the party against whom costs are sought must respond within a further 15 days.

For the court:



D A Kirkpatrick
Environment Judge



ASSOCIATION OF CONSULTING ENGINEERS NEW ZEALAND — ISO 9001 QUALITY ASSURED

LEGEND:

- EXTENT OF CONSTRUCTION AREA FOR AUTHORITY APPLICATION
- 5 METRE CONSTRUCTION BUFFER
- BOUNDARY
- EXTENT OF STAGE 1 AND 2 EARTHWORKS
- STAGE 1
- STAGE 2
- AREA EXCLUDED FROM AUTHORITY APPLICATION

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REF	REVISIONS	BY	DATE
A	ISSUED FOR AUTHORITY TO MODIFY	PDC	21.06.17

PROJECT:

FLETCHER LIVING
SPECIAL HOUSING AREA
ORUARANGI ROAD

TITLE:

5m CONSTRUCTION BUFFER AND AREA TO BE EXCLUDED FROM THE AUTHORITY APPLICATION

ORIGINATOR: DER/RSJ	DATE: 02.2015	SIGNED:	PLOT BY: JYB
DRAWN: SKR	DATE: 19.02.15	SIGNED:	PLOT DATE: 23.06.17
CHECKED: DER	DATE: 20.08.15	SIGNED:	SURVEY BY:
APPROVED: PDC	DATE: 21.06.17	SIGNED:	SURVEY DATE:

ISSUE STATUS: FOR AUTHORITY TO MODIFY

PROJECT No: 136537-01 — SCALES: 1:1250 - A1, 1:2500 - A3 — A1

DRAWING No: 136537-01-081 — REV A

REFER TO APPROVED MASTER DRAWINGS FOR ORIGINAL SIGNATURES File: NEWMARKET \\MANUKAU1\JOBS\1150\136537_A\CAD\01_STAGE 1 & 2\136537-01-080.DWG

Appendix 1